

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CARL STEVEN TOBIN,

Plaintiff,

v.

KING COUNTY DEPARTMENT OF
ADULT AND JUVENILE DETENTION, *et*
al.,

Defendants.

Case No. C14-34-MJP-JPD

ORDER STRIKING PENDING MOTION
TO DISMISS AND GRANTING
PLAINTIFF LEAVE TO FILE AMENDED
COMPLAINT

Plaintiff Carl Tobin is a state prisoner who is currently incarcerated at the Washington Corrections Center in Shelton, Washington. On October 3, 2013, plaintiff filed a civil rights complaint under 42 U.S.C. § 1983 in the King County Superior Court. (Dkt. 1 at 1.) He alleged therein that he had been unlawfully deprived of his legal property when he was transferred from the King County Department of Adult and Juvenile Detention (“KCD AJD”) to the Washington Department of Corrections (“DOC”) in September 2012. (*See id.*, Ex. A.) Plaintiff identified the following defendants in his complaint: the KCD AJD; Kent Division - Regional Justice Center

ORDER STRIKING PENDING MOTION
TO DISMISS AND GRANTING PLAINTIFF
LEAVE TO FILE AMENDED COMPLAINT - 1

1 (“RJC”); Seattle Division - King County Correctional Facility (“KCCF”); John Does 1 and 2, the
2 directors of the RJC and KCCF respectively; and, Dean Owens a Sergeant/Investigator at RJC
3 and KCCF. (*See* Dkt. 1, Ex. A.)

4 Plaintiff thereafter filed a series of amendments to his complaint in which he (1) added
5 more defendants to the action including the DOC, DOC Secretary Bernard Warner, DOC
6 employee John Sanchez, and a number of individuals identified only as John Doe; (2) added new
7 requests for relief; and (3) provided numerous citations to federal and state constitutional
8 provisions and to federal and state statutory law. (*See id.*)

9 On January 8, 2014, defendants removed the action to this Court under 28 U.S.C.
10 § 1441(c) on the grounds that plaintiff’s claims arise under federal law. (*See* Dkt. 1.) Shortly
11 thereafter, on January 15, 2014, the DOC and DOC Secretary Warner filed a motion to dismiss
12 plaintiff’s claims under Rules 8(a) and 12(b)(6) of the Federal Rules of Civil Procedure. (Dkt.
13 6.) The motion to dismiss was originally noted for consideration on February 14, 2014, and was
14 then re-noted for consideration on April 4, 2014 after plaintiff requested, and was granted, an
15 extension of time to file a response to the motion. (Dkts. 13 and 15.) On April 14, 2014,
16 plaintiff filed a second motion for extension of time to file a response to the pending motion to
17 dismiss. (Dkt. 16.)

18 After reviewing plaintiff’s second request for extension of time, defendants’ motion to
19 dismiss, and the balance of the record, the undersigned concluded that rather than grant plaintiff
20 another extension of time, and delay again a ruling on defendants’ motion to dismiss, it would be
21 more efficient for the Court to undertake the screening required by 28 U.S.C. § 1915A, apprise
22

23 ORDER STRIKING PENDING MOTION
TO DISMISS AND GRANTING PLAINTIFF
LEAVE TO FILE AMENDED COMPLAINT - 2

1 plaintiff of the deficiencies in his pleadings, and then give him an opportunity to file an amended
2 pleading curing the identified deficiencies.

3 The Court will begin with a discussion of the basic principles applicable to its review of
4 plaintiff's pleadings. Rule 8(a) of the Federal Rules of Civil Procedure provides that in order for
5 a pleading to state a claim for relief it must contain a short and plain statement of the grounds for
6 the court's jurisdiction, a short and plain statement of the claim showing that the pleader is
7 entitled to relief, and a demand for the relief sought. The statement of the claim must be
8 sufficient to "give the defendant fair notice of what the plaintiff's claim is and the grounds upon
9 which it rests." *Conley v. Gibson*, 355 U.S. 41, 47 (1957). The factual allegations of a
10 complaint must be "enough to raise a right to relief above the speculative level." *Bell Atlantic*
11 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In addition, a complaint must allege facts to state a
12 claim for relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

13 In order to state a claim for relief under 42 U.S.C. § 1983, a plaintiff must show (1) that
14 he suffered a violation of rights protected by the Constitution or created by federal statute, and
15 (2) that the violation was proximately caused by a person acting under color of state or federal
16 law. *See Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). To satisfy the second prong, a
17 plaintiff must allege facts showing how individually named defendants caused, or personally
18 participated in causing, the harm alleged in the complaint. *See Arnold v. IBM*, 637 F.2d 1350,
19 1355 (9th Cir. 1981). A defendant cannot be held liable solely on the basis of supervisory
20 responsibility or position. *Monell v. Department of Social Servs., of City of New York*, 436 U.S.
21 658, 691-694 (1978). Rather, a plaintiff must allege that a defendant's own conduct violated the
22 plaintiff's civil rights. *City of Canton, Ohio v. Harris*, 489 U.S. 378, 385-90 (1989).

23
ORDER STRIKING PENDING MOTION
TO DISMISS AND GRANTING PLAINTIFF
LEAVE TO FILE AMENDED COMPLAINT - 3

1 Plaintiff's pleadings do not comply with the standards set forth above. Accordingly, the
2 Court hereby finds and ORDERS as follows:

3 (1) Plaintiff's pleadings are generally deficient because they do not comply with the
4 requirements of Rule 8(a). Plaintiff's pleadings are lengthy, confusing, and insufficient to put
5 any of the purported defendants on notice of plaintiff's claims or the grounds upon which they
6 rest. Particularly problematic at this point is the sheer number of pleadings currently before the
7 Court. The state court record contains an original complaint and a series of what plaintiff
8 identifies as amendments, but which appear to this Court to be supplements to plaintiff's original
9 pleading. Plaintiff may not proceed on multiple pleadings. The operative pleading must be a
10 single document which sets forth the specific basis of this Court's jurisdiction and which clearly
11 identifies each defendant, the claims he intends to assert against each defendant, the specific
12 facts which he believes support his claims against each defendant, and the relief to which he
13 believes he is entitled.

14 (2) As to the specific defendants identified by plaintiff in his pleadings, the pleadings
15 are deficient in the following respects:

16 (a) Plaintiff identifies the KCDAJD, the RJC, and the KCCF as defendants in his
17 various pleadings. However, "in a legal action involving a county, the county itself is the only
18 legal entity capable of suing and being sued." *See Nolan v. Snohomish County*, 59 Wn.App. 876,
19 883 (1990). The KCDAJD, the RJC, and the KCCF are all entities of King County and, as such,
20 are not proper defendants in this action. If plaintiff elects to pursue a claim against King County,
21 he must specifically identify the County as a defendant in this action and he must identify a
22 municipal "policy" or "custom" that he believes caused his injury.

23 ORDER STRIKING PENDING MOTION
TO DISMISS AND GRANTING PLAINTIFF
LEAVE TO FILE AMENDED COMPLAINT - 4

1 (b) Plaintiff identifies the Washington DOC as a defendant in his pleadings.
2 However, the United States Supreme Court has made clear that neither a state nor its officials
3 acting in their official capacities are “persons” within the meaning of § 1983. *Will v. Michigan*
4 *Department of State Police*, 491 U.S. 58, 71 (1989). States and state agencies are immune from
5 suit in federal court under the Eleventh Amendment unless a state expressly waives its
6 constitutional immunity. *Alden v. Maine*, 527 U.S. 706 (1999). The State of Washington has
7 not waived its Eleventh Amendment immunity. *Whiteside v. State of Washington*, 534 F. Supp.
8 774 (D.C. Wash. 1982). Thus, the Washington Department of Corrections is not a proper
9 defendant in this action.

10 (c) Plaintiff identifies DOC Secretary Warner as a defendant in this action. However,
11 plaintiff has not clearly alleged any facts demonstrating that Secretary Warner *personally*
12 participated in any violation of plaintiff’s federal constitutional rights. Plaintiff is reminded that
13 Secretary Warner may not be held liable based merely on his supervisory responsibility of
14 position. Plaintiff is also reminded, for the reasons stated in the preceding paragraph, that he
15 may not pursue any claims against Secretary Warner for actions undertaken in his official
16 capacity.

17 (d) Plaintiff identifies Dean Owens and John Sanchez as defendants in his various
18 pleadings. Plaintiff’s primary claim against these individuals appears to be that they are
19 somehow responsible for the loss of plaintiff’s personal property. However, where a county or
20 state employee's random, unauthorized act deprives an individual of property, either negligently
21 or intentionally, the individual is relegated to his state post-deprivation process, so long as the
22 state provides an adequate post-deprivation remedy. *Hudson v. Palmer*, 468 U.S. 517, 533

23 ORDER STRIKING PENDING MOTION
TO DISMISS AND GRANTING PLAINTIFF
LEAVE TO FILE AMENDED COMPLAINT - 5

1 (1984); *Parratt v. Taylor*, 451 U.S. 527, 540-41 (1981), *overruled on other grounds by Daniels*
2 *v. Williams*, 474 U.S. 327 (1986).

3 Washington State provides a post-deprivation remedy for the alleged tortious conduct of
4 city and county employees under RCW 4.96 and for the alleged tortious conduct of state
5 employees under RCW 4.92. Plaintiff does not allege any due process inadequacy in the tort
6 remedies provided under RCW 4.96 or RCW 4.92. Thus, plaintiff has not alleged any viable
7 claim for relief under § 1983 against defendants Owens and Sanchez.

8 (d) As to the remaining defendants, identified by plaintiff only as John Doe, plaintiff
9 has not alleged sufficient, specific facts, demonstrating any personal participation in the violation
10 of his federal constitutional rights. Thus, even if plaintiff is able at some juncture to more
11 specifically identify one or more of these proposed Doe defendants, he will be permitted to
12 proceed against such individuals only if the identification is accompanied by a statement of
13 additional facts clearly demonstrating a causal connection between their actions and the alleged
14 violation of plaintiff's rights.

15 (3) Plaintiff may file an amended complaint curing the above noted deficiencies
16 within ***thirty (30) days*** of the date on which this Order is signed. The amended complaint must
17 carry the same case number as this one. If no amended complaint is timely filed, or if plaintiff
18 fails to correct the deficiencies identified in this Order, the Court will dismiss this action under
19 28 U.S.C. § 1915A(b). Plaintiff is advised that an amended pleading operates as a *complete*
20 substitute for an original pleading. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.) (citing
21 *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1990) (as
22 amended), *cert. denied*, 506 U.S. 915 (1992)). Thus, any amended complaint must clearly

23 ORDER STRIKING PENDING MOTION
TO DISMISS AND GRANTING PLAINTIFF
LEAVE TO FILE AMENDED COMPLAINT - 6

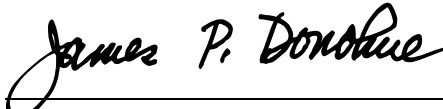
1 identify the defendant(s), the constitutional claim(s) asserted, the specific facts which plaintiff
2 believes support each claim, and the specific relief requested.

3 Plaintiff is also advised that his amended pleading should not identify any purported
4 witnesses, should not contain any citations to case law, and should not be accompanied by any
5 exhibits.

6 (4) The motion of defendants DOC and Bernard Warner to dismiss plaintiff's claims
7 (Dkt. 6) and plaintiff's motion for an extension of time (Dkt. 16) are STRICKEN as moot.

8 (5) The Clerk is directed to send plaintiff the appropriate forms so that he may file an
9 amended complaint. The Clerk is further directed to send copies of this Order to plaintiff and to
10 the Honorable Marsha J. Pechman.

11 DATED this 18th day of April, 2014.

12 
13 JAMES P. DONOHUE
14 United States Magistrate Judge
15
16
17
18
19
20
21
22

23 ORDER STRIKING PENDING MOTION
TO DISMISS AND GRANTING PLAINTIFF
LEAVE TO FILE AMENDED COMPLAINT - 7